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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EARL STANLEY TATE,

Defendant and Appellant.

2d Crim. No. B192411  
(Super. Ct. No. TA082054)  
(Los Angeles County)

Earl Stanley Tate appeals from the judgment entered following his no contest plea to possession of an assault weapon (Pen. Code, § 12280, subd. (b)) and possession of cocaine for sale (Health & Saf. Code, § 11351) while personally armed with a firearm within the meaning of Penal Code section 12022, subdivision (c). Appellant entered the change of plea after the trial court denied his motion to suppress evidence. (Pen. Code, § 1538.5.) He was sentenced to six years eight months state prison and ordered to pay a \$50 lab fee (Health & Saf. Code, § 11372.5, subd. (a)), a \$1,200 restitution fine (Pen. Code, § 1202.4, subd. (b)), and a \$1,200 parole revocation fine (Pen. Code, § 1202.45).

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an opening brief in which no issues were raised.

On April 17, 2007, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On May 7, 2007, appellant filed a supplemental brief stating that the trial court erred in denying the suppression motion, that the consecutive sentence on the arming enhancement and separate count for possession of an assault weapon violate his double jeopardy rights, and that he was denied effective assistance of trial counsel.

These contentions are not supported by the record. (See e.g., *People v. Kelly* (2006) 40 Cal.4th 106, 126.) At the hearing on the suppression motion, evidence was received that Officer Raul Zuniga stopped a GMC SUV for a moving violation, for tinted windows, and for a modified exhaust. The officer shined his spotlights and emergency lights on the vehicle, smelled the odor of unburnt marijuana emanating from the SUV, and saw appellant, who was sitting in the front passenger seat, shove a handgun in the center console. After appellant and the driver were ordered out of the vehicle, Officer Zuniga found a loaded 9 millimeter semiautomatic Uzi handgun and a softball-sized ball of uncut cocaine in the center console. The trial court discredited appellant's testimony and the testimony of other witnesses that the car windows were too dark to see inside the vehicle. Substantial evidence supported the trial court's finding that the officer had probable cause to search the vehicle following a valid traffic stop and the observation of furtive movement. (*Michigan v. Long* (1983) 463 U.S. 1032, 1049-1050 [77 L.Ed.2d 1201, 1220-1221]; *People v. King* (1989) 216 Cal.App.3d 1237, 1239.)

At the sentencing hearing, the trial court sentenced appellant to a three year low term for possession of cocaine for sale (Health & Saf. Code, § 11351) plus three years on the arming enhancement (Pen. Code, § 12022, subd. (c)). Appellant received a consecutive eight month sentence (one-third the midterm) on the conviction for possession of an assault weapon (Pen. Code, § 12280, subd. (b)).

Appellant's assertion that the consecutive sentence violated his double jeopardy rights is without merit. (See e.g., *U.S. v. LaFromboise* (9th Cir. 1997) 105 F.3d 512, 513; see *People v. Bland* (1995) 10 Cal.4th 991, 998-999.) Nor does the record

support appellant's claim that he was denied effective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 [80 L.Ed.2d 674, 693; *People v. Bolin* (1998) 18 Cal.4th 297, 333.)

We have examined the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441; *People v. Kelly*, *supra*, 40 Cal.4th at p. 126.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

John T. Doyle, Judge  
John T. Cheroske, Judge

Superior Court County of Los Angeles

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California Appellate Project, under appointment by the Court of Appeal,  
Jonathan B. Steiner, Executive Director and Ronnie Duberstein, Staff Attorney, for  
Appellant.

No appearance for Respondent.